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Regulations, Rulings, Decisions, and Notices concerning Customs and related matters

and Decisions

of the United States Court of Customs and Patent Appeals and the United States Customs Court

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DEPARTMENT OF THE TREASURY
U.S. Customs Service

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U.S. Customs Service

(T.D. 73-212)

Trademarks, trade names, and copyrights—Customs Regulations amended

Section 133.31(c), Customs Regulations, relating to countries party to the Universal Copyright Convention, amended

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C.

TITLE 19—CUSTOMS DUTIES

CHAPTER I—U.S. CUSTOMS SERVICE

PART 133—TRADEMARKS, TRADE NAMES, AND COPYRIGHTS

Paragraph (c) of section 133.31 of the Customs Regulations (19 CFR 133.31(c)), lists the countries which are party to the Universal Copyright Convention. The Universal Copyright Convention is a multilateral international treaty to which the United States is party. Under the treaty each country grants to each member country copyright rights which are identical to the rights it grants its own citizens. The Register of Copyrights, Copyright Office, Library of Congress, has advised the Commissioner of Customs that, on October 10, 1970, Fiji, on January 23, 1971, Hungary, on March 12, 1968 Mauritius, on May 8, 1972, Morocco, and on May 27, 1973, Union of Soviet Socialist Republics became parties to the Universal Copyright Convention.

Accordingly, paragraph (c) of section 133.31, Customs Regulations, is amended by the insertion of "Fiji," "Hungary," "Mauritius," "Morocco," and "Union of Soviet Socialist Republics," in the appropriate alphabetical sequence in the list of nations who are party to the Universal Copyright Convention.

(R.S. 251, as amended, sec. 624, 46 Stat. 759; 17 U.S.C. 9, 109, 19 U.S.C. 66, 1624)

Because this amendment merely sets forth the names of countries which have become members of the Universal Copyright Convention, notice and public procedure thereon is found to be unnecessary, and good cause exists for dispensing with a delayed effective date, under the provisions of 5 U.S.C. 553.

Effective date. This amendment is effective on publication in the Federal Register.

(ADM-9-03:R:R)

VERNON D. ACREE,
Commissioner of Customs.

Approved July 31, 1973:

EDWARD L. MORGAN,
Assistant Secretary of the Treasury.

[Published in the Federal Register August 8, 1973 (38 FR 21396)]

(T.D. 73-213)

Foreign currencies—Certification of rates

Rate of exchange certified to the Secretary of the Treasury by the Federal Reserve Bank of New York for the Malaysian dollar

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., August 1, 1973.

The Federal Reserve Bank of New York, pursuant to section 522 (c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), has certified the following rate of exchange which varied by 5 per centum or more from the quarterly rate published in Treasury Decision 73-190 for the Malaysian dollar. Therefore, as to entries covering merchandise exported on the date listed, whenever it is necessary for Customs purposes to convert such currency into currency of the United States, conversion shall be at the following daily rate:

Malaysian dollar:
July 27, 1973 ---------- $0.4440

(LIQ-3-O:A:E)

R. N. MARRA,
Director, Appraisement and Collections Division.

[Published in the Federal Register August 14, 1973 (38 FR 21947)]

Decisions of the United States Customs Court

Protest Decision

(C.D. 4462)

RICE-BAYERSDORFER CO. *v.* UNITED STATES

Glass products

An importation of Christmas ornaments of glass described on the invoice as "glass bead cattail" claimed to the properly subject to

classification under item 545.81, Tariff Schedules of the United States, as "Christmas ornaments of glass: Beads" *held* properly classified as "Christmas ornaments of glass: Other" under item 545.85, Tariff Schedules of the United States.

The term "other" in item 545.85 covers Christmas ornaments of glass other than beads.

Beads are small individual articles and not tubes containing bulges which simulate beads.

Protest 68/67267 against the decision of the district director of customs at the port of Philadelphia

[Judgment for defendant.]

(Decided July 26, 1973)

Allerton deC. Tompkins for the plaintiff.

Harlington Wood, Jr., Assistant Attorney General (*Alan Robert Naftalis, Andrew P. Vance* and *David B. Greenfield*, trial attorneys) for the defendant

FORD, Judge: This case involves the proper classification of certain Christmas ornaments of glass. They were invoiced as "glass bead cattail" with various style numbers and letters designating the color. The merchandise was classified under the provisions of item 545.85, Tariff Schedules of the United States, as modified by T.D. 68–9, and assessed with duty at the rate of 36 per centum ad valorem.

Plaintiff contends the imported articles are properly subject to duty at the rate of 10.5 per centum ad valorem under the provisions of item 545.81, Tariff Schedules of the United States, as modified by T.D. 68–9.

The pertinent statutory language involved provides as follows:

Schedule 5, part 3, subpart C:

	Christmas ornaments of glass:	
545.81	Beads	10.5% ad val.
	Other:	
545.85	Valued not over $7.50 per gross	36% ad val.

The record consists of the testimony of two witnesses, one called on behalf of each of the parties, as well as three exhibits received on behalf of plaintiff representing various styles of the imported merchandise. A sample of a string of glass beads stipulated to have been imported by plaintiff and classified under item 545.81, Tariff Schedules of the United States, was received on behalf of defendant as exhibit A. A subpoena which was issued to obtain the presence of defendant's witness, Hayden, was received as defendant's exhibit B.

Bernard Ellis, secretary-treasurer of plaintiff corporation, testified that he acted as buyer for plaintiff for approximately 15 years and is familiar with the imported merchandise such as plaintiff's exhibits 1

through 3. Such merchandise, according to the witness, is sold as "glass bead cattails" or "glass bead sprays." The term "bead" is used in conjunction with these articles because they are strung on wire. Mr. Ellis then stated that he has never seen a Christmas ornament that was composed of only bead. Beads must be strung.

The imported articles are made up of cylindrical blown glass with a minimum of three bumps and a hole in the center. The three or more bulges are connected and are one piece of blown glass, according to Mr. Ellis. Exhibit A was described by the witness as having one bulge per piece of glass and being cylindrical with a hole through the center. The glass articles are in the shape of a cattail and for lack of a better name are always referred to as glass bead cattails or glass bead sprays. This designation is utilized by the trade.

Defendant called John Hayden, assistant to the president and vice president of Pennock Florists, Inc., as a witness on its behalf. Mr. Hayden appeared pursuant to a subpoena duly served upon him. Mr. Hayden testified that he has purchased articles such as plaintiff's exhibits 1, 2 and 3 as an icicle from the plaintiff's salesman, Mr. O'Hara. Defendant's exhibit A was considered by the witness as beads since it is round, strung and can be draped or shaped to an object. The witness would not accept as a good delivery plaintiff's exhibits 1, 2 or 3 as beads. The glass portions of exhibits 1, 2 and 3 were considered by Mr. Hayden to be glass ornaments and he has never had occasion to utilize them separately from the icicle or spray. The witness has used beads in his work and beads are round and a single object. He has used colored glass tubes but has never considered them to be beads. If the witness was designing a centerpiece or door wreath, he might employ the imported merchandise as an icicle. He purchases the merchandise by item number and designates them icicles. The bills however are by item number. The witness further indicated that if he were requested to prepare a glass bead cattail, he would use a rolled, smooth glass tube and not merchandise similar to plaintiff's exhibits 1, 2 or 3.

Mr. Ellis, recalled in rebuttal, testified that his company sells icicles which are usually cone shaped and made for hanging which resemble an icicle. Exhibits 1, 2 and 3 to his knowledge are not known or sold as icicles. The term "icicle" in trade terminology is an article resembling an icicle and such article has a different item number.

Counsel for the parties attribute different meanings to the statutory language "Christmas ornaments of glass: Beads." Plaintiff contends the language should be read as if the colon were not there. Defendant contends the language should be interpreted to mean beads which are Christmas ornaments of glass. I note that the classification under item 545.85, *supra*, is under "other." In the field of customs jurisprudence,

the cases have consistently held that such language is subject to the interpretation placed upon it by defendant. The classified provision would then cover Christmas ornaments of glass other than beads. However, no matter which interpretation is placed upon the language involved, the issue presented is whether the glass portion of the imported articles, containing a minimum of three bumps, is a bead.

As commercial designation of the term "bead" is not claimed, the common meaning of the term governs. *Sears, Roebuck and Co.* v. *United States*, 46 CCPA 79, C.A.D. 701 (1959). In determining the common meaning, the courts may rely upon lexicons. *Atlantic Aluminum & Metal Distributors, Inc.* v. *United States*, 47 CCPA 88, C.A.D. 735 (1960). The common meaning to be given to a term or word used by Congress in a tariff provision is a question of law to be determined by the court. Testimony of witnesses is merely advisory and not binding on the court. *United States* v. *National Carloading Corp., James S. Baker Import Co.*, 48 CCPA 70, C.A.D. 767 (1961).

The court in the case of *Eitinger Bead Co., Inc.*, and *Lawrence Frankel & Co.* v. *United States*, 24 Cust. Ct. 428, Abstract 54251 (1950), in determining the proper classification of an importation of hollow glass round articles of 6 and 7 millimeters and which were strung, considered the following definitions:

> Webster's New International Dictionary, Second Edition (1948):
>
> bead, n. 2. a A small perforated ball strung with others, * * *.b A similar ball or polyhedron used on fabrics or as jewelry in strings.
>
> Funk & Wagnalls New Standard Dictionary, 1942:
>
> bead, n. 2. a A small perforated ball strung with others, * * *. b usually strung on a thread or attached to a fabric for decoration.

While the above definitions relate to round, cylindrical or polyhedron shapes, the court has held other shapes to be beads. *A. W. Fenton Co.* v. *United States*, 51 Treas. Dec. 1030, Abstract 1663 (1927), involved small cylindrical articles resembling a short section of pipe. *United States* v. *Judae & Co.*, 13 Ct. Cust. Appls. 164, T.D. 41024 (1925), involved individual colored beads composed of wood or glass in the style of crystal roundels or disks. *United States* v. *General Transport Co.*, 22 CCPA 446, T.D. 47440 (1934), involved certain small perforated animal-shaped articles composed of mother-of-pearl.

It is to be observed that the merchandise held to be beads in the foregoing cases all were small individual articles. While the term "small" is a relative term, so also is the term "long." In the case of *Rice, Bayersdorfer Co.* v. *United States*, 3 Cust. Ct. 438, Abstract 42424 (1939), certain long glass tubes with bulges, apparently similar to the involved

glass except as to length, the bulges were found by the court not to be beads. Plaintiff herein does not contend the individual bulges are beads but that the glass tubes containing a minimum of three bulges constitute a bead.

I am of the opinion that the glass tubes containing the bulges, while simulating beads, are not in fact within the common understanding of that term.

The action is therefore dismissed. Judgment will be entered accordingly.

508-768—73——2

Decisions of the United States Customs Court

Review Decision

A.R.D. 317

SCHIEFFELIN & CO. *v.* UNITED STATES

Alcoholic Beverages (Cognac Brandy)

EXPORT VALUE—SUCH MERCHANDISE—ADVERTISING EXPENSES

Imported brandy produced in Cognac, France by Jas. Hennessy & Co. and advanced in value upon appraisement under export value as defined in section 402(b) of the Tariff Act of 1930, as amended (19 U.S.C. § 1401a(b)) on the basis of "similar" brandy produced in Cognac, France by Martell & Co. should be reappraised on the basis of "such" Hennessy brandy sold for exportation to the United States, in accordance with the statutory priorities mandated by section 402(f)(4) of the 1930 Tariff Act (19 U.S.C. § 1401a(f)(4)), with an allowance made for a discount of 7½ percent to the selected purchaser. However, appellant's claim for an advertising allowance of $2.00 per case was held to be impermissible for the reasons that such allowances (1) were part of Hennessy's general expenses incurred in connection with its export transactions; and (2) were not fixed or determined at the time of exportation, but were only an estimate subject to later negotiation and revision.

APPLICATION FOR REVIEW OF REAPPRAISEMENT DECISION 11759

Reappraisements R67/18958 and R67/18962

Entered at New York, N.Y.
Entry Nos. 71960; 77000.

First Division, Appellate Term

[Affirmed.]

(Decided July 26, 1973)

Barnes, Richardson & Colburn (James S. O'Kelly, James F. Donnelly, and *Hadley S. King* of counsel) for the appellant.

Harlington Wood, Jr., Assistant Attorney General (*Bernard J. Babb* and *Jordan J. Fiske*, trial attorneys), for the appellee.

Before WATSON, MALETZ, and RE, Judges

MALETZ, Judge: This is an application for review of the decision and judgment of the trial court in *Schieffelin & Co.* v. *United States*, 67 Cust. Ct. 549, R.D. 11759 (1971). Involved is the valuation of two shipments of cognac brandy which were produced in Cognac, France by Jas. Hennessy & Co. (Hennessy) and exported in September and November 1964 to Hennessy's selected purchaser in the United States, Schieffelin & Co. (Schieffelin), the importer-appellant here. The brandy in question was identified on the invoices as Bras Arme Cognac brandy and was bottled in tenth of a gallon sizes and packed 24 bottles per case.

The brandy was entered at the port of New York at the invoice price of $21.495 per case of 24 tenth size bottles, totalling 2.4 gallons per case. However, it was appraised by the government at $22.86 per case on the basis of export value as defined in section 402(b), Tariff Act of 1930, as amended (19 U.S.C. § 1401a(b)).[1]

It has been stipulated, and the trial judge found, that the government's appraised value was determined on the basis of the prices for "*similar*" cognac brandy bottled in equivalent sizes and produced in Cognac, France by Martell & Co. (Martell). In the trial court and here, appellant contends that the appraisement should have been based on the prices for "*such* merchandise" (i.e., Hennessy brandy) and that the correct export value of such brandy is represented by the prices shown on the invoices, i.e., $21.495 per case net packed.

By way of introduction, it is to be noted (as discussed below) that the appeal for reappraisement was prompted by the fact that, if allowed to stand, the appraising officer's return of value of $22.86 per case would result in the assessment of customs duties upon the brandy in question in the amount of $5 per gallon by virtue of what has become popularly known as the "Chicken War" Proclamation which is also discussed below. On the other hand, if the invoice price of $21.495 per case were determined to be the proper value, under the "Chicken War" Proclamation the brandy would be assessed duty of only $1.25 per gallon.

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[1] Sec. 402(b), Tariff Act of 1930, as amended by the Customs Simplification Act of 1956, provides:

(b) EXPORT VALUE.—For the purposes of this section, the export value of imported merchandise shall be the price, at the time of exportation to the United States of the merchandise undergoing appraisement, at which such or similar merchandise is freely sold or, in the absence of sales, offered for sale in the principal markets of the country of exportation, in the usual wholesale quantities and in the ordinary course of trade, for exportation to the United States, plus, when not included in such price, the cost of all containers and coverings of whatever nature and all other expenses incidental to placing the merchandise in condition, packed ready for shipment to the United States.

We turn now to the background history of the case and the pertinent facts, as established by the record.[2] Hennessy, the exporter here, is in the sole business of producing cognac brandy, most of which it sells for export. Its two largest markets are the United States and Great Britain in that order. Schieffelin is an importer of wines and spirits and a manufacturer of pharmaceuticals and cosmetics and has been the exclusive importer and distributor of Hennessy products in the United States and Puerto Rico since 1934. There is no corporate or family relationship between the two companies.

During 1964, Hennessy sold its cognac brandy, as one of its managing directors testified, "at the full f.o.b. world price, less the usual discount which is normally to all our distributors the world over granted as a distributor discount" (R.12). From July 1963 through January 1965, the f.o.b. "world price" in the dollar zone, including the United States, for a case of 24 tenths of Bras Arme Cognac brandy was $25.40 f.o.b. French port.[3] The distributor's discount granted to Schieffelin was 7½ percent, an allowance it had been receiving for over 30 years.

In return for the 7½ percent discount, Schieffelin was responsible for promoting the Hennessy brands and "marques" (various qualities of cognac brandy). It maintained a coast-to-coast sales organization, and public relations and advertising departments. As Schieffelin's president testified (R.39):

> * * * we view ourselves as having the responsibility for the welfare of the given product, * * * to be fully current with changes in the market and to adapt ourselves to those changes * * * in order that we can do the finest job of increasing the volume of sales of Hennessy Cognacs in the United States of America. * * *

Prior to January 1964, Hennessy did not have a net invoicing system. Rather, it would mail out an invoice to Schieffelin for the full f.o.b. price, accompanied by a separate "commission account" or credit note, listing the order number, the "gross value of brandy and packing", the "commission rate" of 7.5 percent, and the full amount

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[2] The record consists of the testimony of one of Hennessy's managing directors, Gerald deGeoffre deChabrignac, and of Schieffelin's board chairman and president, William Jay Schieffelin, III, and three exhibits: Exhibit A, a copy of a letter dated October 13, 1965, from Schieffelin to the Appraiser of Merchandise at the port of New York; exhibit B, a certified copy of a report, dated February 12, 1965, of Customs Representative Jacques L. Changeux of his investigation of Hennessy, to which are appended exhibits "A" through "L"; and exhibit C, a certified copy of a report, dated February 17, 1965, by the same Changeux of his investigation of Martell.

[3] An equivalent price list in pounds sterling was used in the sterling zone countries, except for sales to Great Britain and Italy, where Hennessy gave preferential prices, and to West Germany, Austria, Switzerland and Holland, where the brandy was imported only in casks. The distributor's discounts varied according to local conditions in the foreign markets, but were higher than that given to Schieffelin.

of the commission. Schieffelin would then remit payment for the invoice less the amount of the commission credited in the accompanying statement. The 7½ percent was entered in Hennessy's books as a discount.

Hennessy also advertised in all of its foreign markets, including the United States. It bore a large portion of the cost of advertising, either by granting an advertising allowance off the price of the merchandise, or by paying the actual advertising expenses as they were billed for them by the foreign importer.[4]

With respect to the United States market, prior to 1964, Hennessy assumed a major part of the advertising expenses incurred in the promotion and sale of Hennessy brandies in this country. Under that arrangement, there were no "advertising allowance deductions"; instead, Hennessy and Schieffelin set up an annual advertising budget composed of two parts: one supplied by Schieffelin, the other supplied by Hennessy "direct". Schieffelin would handle all the advertising for Hennessy, and Hennessy, in turn, would reimburse Schieffelin for such expenditures by sending periodic remittances. Thus, during 1963, Hennessy remitted approximately $300,000 in bank drafts to Schieffelin which was entered in Hennessy's books as an "advertising expense".

It is to be added that prior to 1964, Hennessy and Schieffelin had no problem with their long-standing arrangements, as described above, since brandy was dutiable at a specific rate of duty, i.e., $1.25 per gallon.[5] Hence, no question of value was involved. In view of this circumstance, Hennessy and other brandy producers, such as Martell, who exported to the United States, invoiced and entered their brandy at the full f.o.b. list price without even bothering to show the distributor's discount.

However, late in 1963, a series of events known as the "Chicken War" intruded upon the brandy exporting trade, causing the producers to consider devising new methods of invoicing their exports to the United States in an attempt to legally reduce the value of their merchandise in the appraisement by United States customs officials.

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[4] In Great Britain, the advertising expenses were incurred and paid for by Hennessy's British distributor, and Hennessy reimbursed it by means of two or three annual payments. In Italy, an amount was deducted from each invoice to cover advertising and promotion expenses for the Italian market. At the end of each year, the total of the deductions for advertising was compared to the total amount actually spent and, if not sufficient to cover the latter, Hennessy made additional payments to reimburse its distributor. In France, the home market, Hennessy conducted its own advertising without intermediaries.

[5] Prior to 1964, the merchandise was classified under item 168.20 of the tariff schedules which provided for—

Brandy:

In containers each holding not over 1 gallon---------- $1.25 per gal.

The so-called "Chicken War" began when the European Economic Community (EEC) promulgated new higher fees on poultry imports into the Common Market. Among other things, these fees adversely affected the importation of frozen poultry from the United States into West Germany, a member of the EEC. In response to what were considered unduly burdensome foreign import restrictions on domestic poultry producers who exported to the Common Market countries, President Johnson issued Proclamation No. 3564 on December 4, 1963 (T.D. 56072), which withdrew previously proclaimed tariff concessions on EEC goods effective January 7, 1964.[6] The higher rates resulting from withdrawing the concessions were calculated to increase the duty on EEC goods imported into the United States in an amount which would approximately balance the higher import fees imposed by the EEC.

So far as the present case is concerned, the Proclamation amended the tariff schedules by inserting the following item under the heading "Subpart B" of Part 2 of the Appendix thereto:

945.16	Brandy, valued over $9.00 per gallon (provided for in items 168.20 and 168.22)---	$5 per gal.

The effect of the newly promulgated item 945.16 was to make the $5 per gallon duty on brandy applicable to a case of 24 tenths (2.4 gallons) valued over $21.60 a case, whereas the $1.25 duty on a case of 24 tenths valued at $21.60 or under (i.e., $9.00 or under per gallon) remained unchanged.

In this setting, in order to avoid the increased duties, Schieffelin and Hennessy worked out a new system to commence in January 1964 which in essence changed their method of invoicing from an f.o.b. list price to a so-called "net/net" price.

The "net/net" price reflected two deductions. One was the 7½ percent distributor's discount received by Schieffelin since 1934. This deduction brought the price down to $23.50 per case, which was the amount remitted to Hennessy in 1963 by Schieffelin under its old pricing arrangement.

The second deduction from the f.o.b. list price represented an "advertising allowance" for advertising placed in the United States by Schieffelin for Hennessy in connection with sales of the Bras Arme Cognac tenths. Under this new method, Hennessy and Schieffelin

[6] For a history of the Proclamation, see *United States* v. *Star Industries, Inc.*, 59 CCPA 159, C.A.D. 1060, 462 F.2d 557 (1972), *cert. den.* 409 U.S. 1076 (1972), and sources cited therein. In *Star Industries*, the appellate court reversed the decision and judgment of the trial court, 65 Cust. Ct. 662, C.D. 4155, 320 F. Supp. 1018 (1970), which had declared the Proclamation invalid and void. Contrary to the trial court, the appellate court determined that the President did not exceed the authority granted to him under section 252(c) of the Trade Expansion Act of 1962 (19 U.S.C. § 1882(c)) in issuing Proclamation No. 3564 and thus held it to be valid.

estimated Hennessy's advertising budget for 1964 which, based on Hennessy's "advertising contribution" of $298,201.50 in 1963 for "advertising, point-of-sale merchandising and publicity", was approximately $300,000. This figure was then broken down into the amounts which Hennessy and Schieffelin estimated would be spent on advertising for the various marques and sizes. The parties then allocated $2.00 per case to the Bras Arme tenths and deducted that amount from the f.o.b. list price. This $2.00 per case allowance, in addition to the 7½ percent distributor discount, brought the invoice price down to $21.495 per case—an amount which was under the $21.60 breaking point at which the $5 per gallon customs duty went into effect.

As it turned out, however, the amounts originally estimated by Hennessy and Schieffelin to be spent on advertising had been calculated at a minimum figure, and the actual advertising expenditure by Schieffelin for each Hennessy product in 1964 was higher than the total amount of the deductions allowed off each shipment. In this connection, Schieffelin submitted a semi-annual report in June 1964 to Hennessy which detailed its receipts and actual disbursements and analyzed the advertising allowances for 1964 versus the actual "Hennessy advertising budget". It indicated that the actual expenses for 1964 would total just under $320,000. Hennessy thereupon remitted to Schieffelin a bank draft to cover the difference between the estimated advertising allowances and the actual expenses incurred.

It was against this background that the government appraiser (1) rejected Hennessy's invoiced "net/net" price of $21.495 for the shipments involved here, and (2) based the appraisements upon the f.o.b. list price of $25.40 per case for equivalent sizes of Martell Cognac brandy, less Martell's distributor's discount of 10 percent, and thus arrived at a value of $22.86 per case.[7]

At the trial below, both parties agreed that export value was the proper basis of appraisement. However, the government defended the value found by the appraiser, while the importer argued that the correct export value was the invoiced price of $21.495 per case.

The trial judge agreed with plaintiff that the imported merchandise should have been appraised on the basis of "such" Hennessy brandy, not the "similar" Martell brandy, in view of "the statutory priorities

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[7] Martell also incurred advertising expenses which, prior to 1964, it remitted periodically to its United States distributors by bank draft. Commencing January 1964, Martell also changed its bookkeeping procedures and remitted part of its share of advertising expenses by granting an "advertising allowance" which it deducted on the invoice in order to bring the price of its brandy down to below the $9.00 per gallon limit. While the appraising officer allowed the distributor's discount in finding a value for the Hennessy brandy in question, he disallowed the claimed "advertising allowance".

mandated" by section 402(f)(4) of the Tariff Act of 1930, as amended (19 U.S.C. § 1401a(f)(4)).[8] He stated (67 Cust. Ct. at 553):

> * * * The full f.o.b. Hennessy export price to the United States of $25.40 was stable during the entire 1963–64 period, and was comparable to the Hennessy prices in the home market and third country markets.
> Under these circumstances, there is no question in the court's mind but that the Hennessy price of $25.40 per case of 24 tenths of Bras Arme Cognac brandy fairly reflected the market value of the merchandise at bar, and all other conditions conducive to appraisement being present, this price should have been utilized in the appraisement of the instant merchandise.

In a further respect, however, the trial judge agreed with the principle applied by the appraiser in making a deduction against the full f.o.b price to find a statutory export price. Accordingly, he found that the distributor's discount of 7½ percent paid by Hennessy to Schieffelin was "genuine" and an allowable deduction against the full f.o.b. price.

The trial judge also held that the advertising allowance of $2.00 per case was not an allowable expense, stating (67 Cust. Ct. at 554):

> * * * We are not concerned here with an accrued item of expense which influences the export price demanded and paid between foreign producer and American purchaser. The claimed item of expense is an expense connected solely with the *resale* of the imported product in the United States. In this posture the advertising expense has to paraphrase the words of our appeals court, nothing to do with the price at which the involved merchandise was sold in France for exportation to the United States, although it did, to some extent affect the profits of the producer. * * *
>
> The advertising expenditures directed at the United States market in this case are, in the court's opinion, the manifestation of a joint venture undertaken by the plaintiff-distributor and

[8] Sec. 402(f)(4) of the Tariff Act of 1930, as amended, provides:

(4) The term "such or similar merchandise" means merchandise in the first of the following categories in respect of which export value, United States value, or constructed value, as the case may be, can be satisfactorily determined:

(A) The merchandise undergoing appraisement and other merchandise which is identical in physical characteristics with, and was produced in the same country by the same person as, the merchandise undergoing appraisement.

(B) Merchandise which is identical in physical characteristics with, and was produced by another person in the same country as, the merchandise undergoing appraisement.

(C) Merchandise (i) produced in the same country and by the same person as the merchandise undergoing appraisement, (ii) like the merchandise undergoing appraisement in component material or materials and in t he purposes for which used, and (iii) approximately equal in commercial value to the merchandise undergoing appraisement.

(D) Merchandise which satisfies all the requirements of subdivision (C) except that it was produced by another person.

the foreign producer, who regarded plaintiff as its "agent", to promote the resale of the Hennessy products to their mutual advantage. And although the advertising allowance was taken into consideration under the net invoicing procedures initiated by Hennessy and plaintiff in 1964, this arrangement only subserved the convenience of the parties in "tracking" the advertising expenditures, the amount of which was as yet undetermined as of the time of preparation of invoices covering export transactions. Therefore, as to this item, the court fully agrees with defendant when it states (defendant's brief, page 22):

> [T]he manufacturer and the plaintiff were engaged in a relationship distinct from sales and purchases of cases of Cognac. The relationship appeared to be that of agency, whereby the manufacturer procured about $300,000 worth of advertising for its product through the aid of its agent for this purpose, the plaintiff.

In conclusion, the trial court found the export value of the merchandise to be $25.40 per case, less a 7½ percent distributor's discount, packed.

On appeal, appellant has made the same claims as below. The government-appellee, however, has shifted from its original position and now concedes that "such" (i.e., Hennessy) merchandise should have been utilized as the basis for appraisement and that the claimed 7½ percent distributor's discount was allowable. The government also supports the "result" reached by the trial judge in disallowing the claimed deduction for the advertising allowance "although not on the same theory of law" (brief 21). It now argues that the allowance of $2.00 per case "was not a firm amount at the time of exportation" as it "was subject to later alteration" (brief 19). Accordingly, the government, relying on *United States* v. *Josef Mfg., Ltd.*, 59 CCPA 146, C.A.D. 1057, 460 F.2d 1079 (1972), argues that since the advertising allowance was not fixed and determinate at the time of exportation, it may not be considered in determining the export value of the merchandise. In passing, it would seem that the government—inferentially at least—would agree with the converse of its thesis, namely, that if the advertising allowance had been firmly pegged to a $2.00 per case allocation that was fixed at the time of exportation, it would have been non-dutiable.

As to these several aspects, we are in accord with the trial judge that by virtue of the statutory priorities mandated by section 402(f)(4)(A), the imported merchandise should have been appraised on the basis of "such" or identical cognac brandy produced by Hennessy and not on the basis of "similar" brandy produced by Martell.

Since Schieffelin is a selected purchaser, the next question is whether the record establishes that the "price" of a case of 24 Bras Arme

Cognac tenths fairly reflects market value as required by section 402 (f) (1) (B) of the Tariff Act of 1930, as amended (19 U.S.C. § 1401a(f) (1) (B)).[9]

In determining whether a price fairly reflects market value, "in order to provide safeguards against the possible 'rigging' of export value through sales at non-market prices", comparison of home market and third country selling prices with the invoice to the selected purchaser here is an extremely important factor in determining whether the invoice price fairly reflects market value. *Myerson Tooth Corporation* v. *United States*, 61 Cust. Ct. 540, 544, R.D. 11597 (1968), *aff'd* 64 Cust. Ct. 860, A.R.D. 273, 313 F. Supp. 1016 (1970). See also e.g. *United States* v. *Acme Steel Company*, 51 CCPA 81, C.A.D. 841 (1964); *C. H. Powell Co., Inc.* v. *United States*, 69 Cust. Ct. 257, A.R.D. 307 (1972).

Certainly the full f.o.b. list export price (characterized by Hennesy's director as the "full f.o.b. world price" (R.12)) of $25.40 per case of 24 tenths of Hennessy Bras Arme Cognac brandy was comparable to its prices in the balance of the dollar zone, as well as in the sterling zone and the home market. Thus, under the guidelines set out in the previous paragraph, it met the requirements of section 402(f)(B)(1) and was the appropriate price to use as a basis for the appraisements in question.

We also agree with the trial judge that the 7½ percent distributor's discount received by Schieffelin, in return for which it performed various services, is properly deductible from the f.o.b. list price. It was a bona fide discount which, it is to be noted, was also comparable to distributors' discounts given in third country markets and to Hennessy's own sales agents in France who received an 8 percent commission on sales to wholesalers.

The "advertising allowance", however, is of an entirely different nature. It is clear from the record that prior to 1964 Schieffelin placed advertising and laid out money for Hennessy (for which it was subsequently reimbursed) to promote the sale of Hennessy products in the United States.

What is of particular significance is that this relationship did not change in 1964. Schieffelin continued to place advertising for Hennessy, and Hennessy continued to pay for it as agreed upon in advance.

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[9] Section 402(f)(1)(B) provides that—

(f) For the purposes of this section—

(1) The term "freely sold or, in the absence of sales, offered for sale" means sold or, in the absence of sales, offered—

* * * * * * *

(B) in the ordinary course of trade to one or more selected purchasers at wholesale at a price which fairly reflects the market value of the merchandise, * * *.

However, instead of making reimbursements to Schieffelin on a lump sum basis, Hennessy paid for such advertising on a continuing basis by knocking $2.00 off the full f.o.b. list price. Thus, in essence, there was no change in the manner of doing business but simply a change in the invoicing procedure.

As previously indicated, the $2.00 deduction, which was based on "estimated amounts to be spent on advertising", was insufficient: Schieffelin subsequently submitted a semi-annual accounting to Hennessy of its disbursements and projected costs; and Hennessy made its final payments by bank drafts to meet those additional "mutually agreed upon, shared" expenses which were incurred as "opportunities [appeared] to us in the American market place" (R.41).

Thus, it is patent that the so-called "net/net" invoice price was not the *sales price*, but merely reflected a private billing arrangement in which Hennessy attempted to set off advertising expenses which it incurred against Schieffelin's payments for the merchandise. Undoubtedly, Hennessy could have made other arrangements for reimbursing Schieffelin for advertising expenses. It could, for example, have accomplished the same result by reducing the invoice price to $1.00 until all advertising expenses were paid off and then have billed Schieffelin for the full f.o.b. list price of $25.40 on all subsequent shipments for that year. The point is that there is no real distinction between the hypothetical $1.00 invoice price and the $21.495 invoice price here: both are arbitrary and both are irrelevant to the market price of the merchandise in question.

Another aspect to be considered is that expenses incurred on behalf of the seller and which inure to its benefit are costs incurred by the latter in producing its prices. Accordingly, the costs to a manufacturer in producing and marketing its product are part of the selling price and hence dutiable. *Norco Sales Company* v. *United States*, 65 Cust. Ct. 778, R.D. 11732, 319 F. Supp. 1399 (1970).

Furthermore, the place where the expenses were incurred or when they accrued is not controlling as long as they were considered a part of the price of the merchandise. In *United States* v. *Erb & Gray Scientific, Inc.*, 54 Cust. Ct. 791, 795, 796, A.R.D. 186 (1965), *aff'd* 53 CCPA 46, C.A.D. 875 (1966), the Appellate Term stated (54 Cust. Ct. at 795–6):

> It is reasonable to conclude that a seller of merchandise ordinarily computes all of his expenses before arriving at a price which he must receive for his merchandise, and it seems obvious that whether expenses are incurred in the country of exportation or in the country of importation, the price should cover them.

* * * * * * *

> * * * in the determination of export value, the emphasis is not upon when the issuable charges accrued, but upon what was the value in the principal market. If the disputed charges, whenever they may, in fact, accrue, are always included in the price at which the merchandise is sold, then they are part of that price and of the value which derives from that price. *United States* v. *Paul A. Straub & Co., Inc.*, 41 CCPA 209, C.A.D. 553; *Albert Mottola, etc.* v. *United States*, 46 CCPA 17, C.A.D. 689.

The short of the matter is that the advertising expenses in issue were part of Hennessy's general expenses incurred in connection with its export transactions. For the expenses incurred by a manufacturer for advertising his goods in a specific export market have a direct bearing on his sales for export to that market and thus are part of his expenses in producing such goods. As the Appellate Term stated in *United States* v. *C. J. Tower & Sons*, 52 Cust. Ct. 636, 637, A.R.D. 172 (1964):

> We are of the opinion that advertising costs paid for by the manufacturer whether in trade publications or in magazines directed toward the ultimate consumer, as is the case herein, should properly be included in the general expenses in determining costs of production under section 402(f), *supra*, since, in either event, the advertising inures to the benefit of the manufacturer. *United States* v. *Alfred Dunhill of London, Inc.*, 32 CCPA 187, C.A.D. 305.

What is more, even if the $2.00 advertising allowance were a genuine "discount", as claimed, it still would not be deductible because the record establishes that this allowance was not fixed or determinate at the time of exportation, but was only an estimate subject to later negotiation and revision. As the trial court aptly observed (67 Cust. Ct. at 554):

> * * * this arrangement only subserved the convenience of the parties in "tracking" the advertising expenditures, the amount of which was as yet undetermined as of the time of preparation of invoices covering export transactions. * * *

In sum, the claimed invoice price here was not fixed at the time of exportation of the merchandise since it reflected an estimated advertising allowance which was to be renegotiated. And under the customs laws a fluctuating or negotiable price is no price for appraisement purposes. Statutory export value contemplates a fixed uniform price for the merchandise at the time of exportation. *United States* v. *Josef Mfg., Ltd.*, 59 CCPA 146, C.A.D. 1057 (1972); *Aceto Chemical Co., Inc.*, v. *United States*, 51 CCPA 121, C.A.D. 846 (1964).

For the foregoing reasons, we affirm the decision and judgment of the trial judge and incorporate by reference his findings of fact and conclusions of law.

Decisions of the United States Customs Court

Abstracts

Abstracted Protest Decisions

DEPARTMENT OF THE TREASURY, *July 30, 1973.*

The following abstracts of decisions of the United States Customs Court at New York are published for the information and guidance of officers of the customs and others concerned. Although the decisions are not of sufficient general interest to print in full, the summary herein given will be of assistance to customs officials in easily locating cases and tracing important facts.

VERNON D. ACREE,
Commissioner of Customs.

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P73/757	Rao, J July 23, 1973	American Honda Motor Co., Inc.	67/4349	Item 685.90 17.5%	Item 683.60 8.5%	Judgment on the pleadings	Los Angeles Contact breakers or breaker assemblies

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P73/758	Rao, J. July 23, 1973	Klockner, Inc.	70/40301	Item 632.84 14%	Item 607.50 0.4¢ per lb. of silicon content	Judgment on the pleadings	New York Ferro silicon containing over 8% but not over 60% by weight of silicon
P73/759	Rao, J. July 23, 1973	Carl Zeiss, Inc.	66/54153	Item 712.05 59%	Item 710.80 15%	Judgment on the pleadings	New York Non-optical measuring or checking apparatus and machines
P73/760	Richardson, J. July 23, 1973	Laconia Needle Mfg. Co.	71-5-00146	Item 670.58 70¢ per 1,000 and 21%	Item 660.88 7.5%	Judgment on the pleadings Pistorino & Company, Inc. v. U.S. (C.D. 4373)	Boston Latch needle blanks
P73/761	Rao, J. July 24, 1973	Aimcee Wholesale Corp.	66/25405, etc.	Item 651.75 Various ad valorem equivalent rates as set forth in schedule A, attached to decision and judgment, in column	Item 651.75 At appropriate rates set forth in column on said schedule headed "Claimed Rate"; the specific rate or specific	Import Associates of America et al. v. U.S. (C.A.D. 961)	New York Flatware sets

				headed "Assessed Ad Valorem Equivalent Rate"	portion of the compound rate being applied once against each tool, knife, fork, spoon or other utensil in the set		
P73/762	Rao, J. July 24, 1973	Anglo Affiliated Corp. et al.	69/43762, etc.	Item 651.75 Various ad valorem equivalent rates as set forth in schedule A, attached to decision and judgment, in column headed "Assessed Ad Valorem Equivalent Rate"	Item 651.75 At such compound rates as set forth in column of said schedule headed "Claimed Rate" the specific portion of the compound rate being applied once against each utensil in the set	Import Associates of America et al. v. U.S. (C.A.D. 961)	New York Flatware sets
P73/763	Rao, J. July 24, 1973	Dynasty of Hong Kong, Ltd.	69/4558, etc.	Item 382.04 42.5% Item 382.05 38%	Item 382.81 27.5% plus 25¢ per lb.	Agreed statement of facts	New York Quilted robes of man-made fibers

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P73/764	Rao, J. July 24, 1973	Imperial International Corp.	68/9093, etc.	Item 651.75 Various ad valorem equivalent rates as set forth in schedule A, attached to decision and judgment, in column headed "Assessed Ad Valorem Equivalent Rate"	Item 651.75 At approximate rates set forth in column on said sechdule headed "Claimed Rate"; the specific rate or specific portion of the compound rate being applied once against each tool, knife, fork, spoon or other utensil in the set	Import Associates of America et al. v. U.S. (C.A.D. 961)	New York Flatware sets
P73/765	Rao, J. July 24, 1973	E. J. Korvette (Div. of Spartans Industries, Inc.)	68/63656, etc.	Item 380.84 27.5% plus 25¢ per lb.	Item 376.56 30% or 27%	Agreed statement of facts	New York Men's and boys' jackets and coats

P73/766	Rao, J. July 24, 1973	Nissho-Iwai American Corp.	70/50901	Item 335.60 22.5% plus 25¢ per lb.	Item 335.90 10%	Agreed statement of facts	New York Woven fabrics, invoiced as T-254
P73/767	Ford, J. July 24, 1973	Commodore Business Machines, Inc.	71-8-00033	Item 676.23 12.5%	Item 676.20 10.5%	Agreed statement of facts	New York Calculating machines specially constructed for multiplying and dividing
P73/768	Ford, J. July 24, 1973	Korody Colyer Corp. et al.	70/23875, etc.	Item 660.54 9% or 8%	Item 660.92 5%, 4.5% or 4%	Korody-Colyer Corp. v. U.S. (C.D. 4212)	Los Angeles Parts of fuel injection pumps
P73/769	Ford, J. July 24, 1973	Sony Corporation of America	66/13235, etc.	Item 684.70 15%	Item 685.22 12.5% Regional commissioner to take further administrative action not inconsistent with judgment	General Electric Company v. U.S. (C.D. 3387, aff'd C.A.D. 1021))	New York Earphones and jacks imported with radios (entireties)
P73/770	Richardson, J. July 24, 1973	Broderick & Bascom Rope Co.	69/31326	Item 674.35 13%	Item 670.90 10.5%	Broderick & Bascom Rope Co. v. U.S. (C.A.D. 1053)	New York Articles of wire rope machinery
P73/771	Maletz, J. July 24, 1973	Rene D. Lyon Company, Inc.	67/87523, etc.	Item 737.40 35%	Item 791.19 17%	Agreed statement of facts	New York Small figures of squirrels, not chiefly used for amusement of children or adults, in c.v. of fur on the skin

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P73/772	Ford, J. July 25, 1973	De Jur Amsco Corporation et al.	66/36022, etc.	Item 684.70 15% or 13% (items marked "A" and "B") Item 684.70 15% (items marked "C" and "D")	Protests premature (items marked "A") Item 685.40 11.5% or 10% (items marked "B", "C" and "D") Regional commissioner shall take further administrative action consistent with decision and judgment	General Electric Company v. U.S. (C.D. 3887, aff'd C.A.D. 1021) (items marked "A", "B" and "C") Edo Commercial Corp. et al. v. U.S. (C.D. 4019) (items marked "D")	New York Earphones imported with the dictation recording and transcribing machines with which they are used (entireties) (items marked "A") Earphones (items marked "B") Stetoclips (items marked "C") Microphone/speakers, which are more than microphones (items marked "D")

Decisions of the United States Customs Court

Abstracts

Abstracted Reappraisement Decisions

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	UNIT OF VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R73/211	Boe, C. J. July 24, 1973	Wm. R. Neal, Inc.	R69/10142, etc.	Constructed value: Invoice unit values plus 13% net packed	Not stated	Agreed statement of facts	Buffalo-Niagara Falls Various teaching apparatus, equipment and parts thereof
R73/212	Boe, C. J. July 24, 1973	Wm. R. Neal, Inc.	R69/10198, etc.	Constructed value: Invoice unit values plus 13%, net packed	Not stated	Agreed statement of facts	Buffalo-Niagara Falls Various teaching apparatus, equipment and parts thereof
R73/213	Boe, C. J. July 24, 1973	Wm. R. Neal, Inc.	R69/10913, etc.	Constructed value: Invoice unit values plus 13%, net packed	Not stated	Agreed statement of facts	Buffalo-Niagara Falls Various teaching apparatus, equipment and parts thereof

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	UNIT OF VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R73/214	Boe, C. J. July 24, 1973	Wm. R. Neal, Inc.	R69/10914, etc.	Constructed value: Invoice unit values plus 13%, net packed	Not state	Agree statement of facts	Buffalo-Niagara Falls Various teaching apparatus, equipment and parts thereof
R73/215	Boe, C. J. July 24, 1973	Wm. R. Neal, Inc.	R69/10933, etc.	Constructed value: Invoice unit values plus 13%, net packed	Not stated	Agreed statement o facts	Buffalo-Niagara Falls Various teaching apparatus, equipment and parts thereof
R73/216	Boe, C. J. July 24, 1973	Wm. R. Neal, Inc.	R70/518, etc.	Constructed value: Invoice unit values plus 13%, net packed	Not stated	Agreed statement of facts	Buffalo-Niagara Falls Various teaching apparatus, equipment and parts thereof
R73/217	Boe, C. J. July 24, 1973	Wm. R. Neal, Inc.	R70/540, etc.	Constructed value: Invoice unit values plus 13% net packed	Not stated	Agreed statement of facts	Buffalo-Niagara Falls Various teaching apparatus, equipment and parts thereof
R73/218	Ford, J. July 24, 1973	Nikko Boeki Hong Kong, Ltd.	R70/1818, etc.	Constructed value	As shown on schedule attached to decision and judgment	Agreed statement of facts	New York 9 transistor radios, gift boxes, earphones, batteries and straps

Appeals to United States Court of Customs and Patent Appeals

APPEAL 74–8.—Quigley & Manard, Inc. *v.* United States.—COMPLAINT UNTIMELY FILED—MOTION TO COMPEL FILING DENIED—DISMISSAL FOR LACK OF PROSECUTION—REHEARING DENIED.

In this case plaintiff-appellant's complaint covering two actions was returned by the Customs Court as untimely filed and plaintiff moved to compel the clerk to file the complaint and remove the actions from the October 1970 Reserve File. Plaintiff's motion was denied and on April 5, 1973 an order of dismissal for lack of prosecution was issued by the Court in one of the actions, Court No. 67/61649. Plaintiff's motion for a rehearing covering Court Nos. 67/61648 and 67/61649 was denied on May 21, 1973.

Attached to appellant's Notice of Appeal is a Statement of Errors of Law and Fact which sets forth at length the circumstances upon which appellant bases its appeal. Appellant claims that, in light of the facts set forth, the Customs Court erred in not ordering a rehearing to set aside the dismissal of appellant's action for lack of prosecution and in not compelling the clerk to file appellant's complaint.

Appellant appeals to the Court of Customs and Patent Appeals "from a final order of dismissal of plaintiff's action by the United States Customs Court entered in the office of the Clerk of the United States Customs Court on April 5, 1973 and the denial of plaintiff's motion for a rehearing to set aside the dismissal of plaintiff's action for lack of prosecution entered in the office of the Clerk of the United States Customs Court on May 21, 1973 and from each and every part thereof and for an order compelling the Clerk of the United States Customs Court to file appellant's complaint and for such other and further relief as the court may deem proper."

APPEAL 74–9.—Harlo Expediters, Inc., and Walker Pen Company, Inc. *v.* United States.—MOTION TO COMPEL FILING OF COMPLAINT DENIED—ACTION DISMISSED FOR LACK OF PROSECUTION.

In this case, plaintiffs-appellants filed a motion to compel the clerk of the Customs Court to accept and file their complaint in the action. The motion was denied. Plaintiffs' motion for a rehearing thereof and/or for enlargement of time within which to file a complaint was also denied.

It is claimed that the Customs Court erred in denying the motion of the plaintiffs to extend the time within which to file a complaint, even though defendant below (appellee) did not object to the motion;

in denying the motion for reconsideration of the denial of said motion on the ground that plaintiffs have failed to show good and sufficient cause to be relieved of their default in the timely filing of the complaint in this case; in issuing the "Order of Dismissal" of complaint of plaintiffs entered by the clerk of the United States Customs Court on June 1, 1973. Plaintiffs further stated in their assignment of errors that "the denial of the above motion and the denial of the motion for reconsideration of the denial of said motion and the Order of Dismissal of complaint of plaintiffs * * * were all arbitrary and capricious; did not take into consideration the circumstances involved and constituted an abuse of discretion." Appeal from order of June 1, 1973 (not published).

Tariff Commission Notices

Investigations by the United States Tariff Commission

DEPARTMENT OF THE TREASURY, *August 9, 1973.*

The appended notices relating to investigations by the United States Tariff Commission are published for the information of Customs officers and others concerned.

VERNON D. ACREE,
Commissioner of Customs.

[337–L–62]

CERTAIN HYDRAULIC TAPPETS

Extension of time for filing written views

On June 19, 1973, the United States Tariff Commission published notice of the receipt of a complaint under section 337 of the Tariff Act of 1930, filed by Johnson Products, Inc., of Muskegon, Michigan, alleging unfair methods of competition and unfair acts in the importation and sale of certain hydraulic tappets (38 F.R. 16002). Interested parties were given until July 27, 1973, to file written views pertinent to the subject matter of a preliminary inquiry into the allegations of the complaint. The Commission has extended the time for filing written views until the close of business on September 27, 1973.

By order of the Commission:

KENNETH R. MASON,
Secretary.

Issued July 30, 1973.

[AA1921–128]

PAPERMAKING MACHINERY AND PARTS THEREOF FROM SWEDEN

Notice of investigation and hearing

Having received advice from the Treasury Department on July 24, 1973, that papermaking machinery and parts thereof from Sweden

are being, or are likely to be, sold at less than fair value, the United States Tariff Commission on July 27, 1973, instituted investigation No. AA1921–128 under section 201(a) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)), to determine whether an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of such merchandise into the United States.

Hearing. A public hearing in connection with the investigation will be held in the Tariff Commission's Hearing Room, Tariff Commisison Building, 8th and E Streets, N.W., Washington, D.C. 20436, beginning at 10 a.m., E.D.T., on Tuesday, September 18, 1973. All parties will be given an opportunity to be present, to produce evidence, and to be heard at such hearing. Requests to appear at the public hearing should be received by the Secretary of the Tariff Commission, in writing, at its office in Washington, D.C., not later than noon, Thursday, September 13, 1973.

By order of the Commission:

KENNETH R. MASON,
Secretary.

Issued July 30, 1973.

[TEA–F–54]

PETITION OF STANDARD CELLULOSE AND NOVELTY CO., INC., FOR A DETERMINATION UNDER SECTION 301(c)(1) OF THE TRADE EXPANSION ACT OF 1962

Notice of investigation

On the basis of a petition filed under section 301(a)(2) of the Trade Expansion Act of 1962 on behalf of Standard Cellulose and Novelty Co., Inc., Ozone Park, New York, the United States Tariff Commission, on July 27, 1973, instituted an investigation under section 301(c)(1) of the said Act to determine whether, as a result in major part of concessions granted under trade agreements, articles like or directly competitive with artificial plastic Christmas trees, garlands and wreaths (of the types provided for in item 772.97 of the Tariff Schedules of the United States) produced by the aforementioned firm, are being imported into the United States in such increased quantities as to cause, or threaten to cause, serious injury to such firm.

The optional public hearing afforded by law has not been requested by the petitioners. Any other party showing a proper interest in the subject matter of the investigation may request a hearing, provided

such request is filed within 10 days after the notice is published in the *Federal Register.*

The petition filed in this case is available for inspection at the Office of the Secretary, United States Tariff Commission, 8th and E Streets, N.W., Washington, D.C., and at the New York City office of the Tariff Commission located in Room 437 of the Customhouse.

By order of the Commission:

KENNETH R. MASON,
Secretary.

Issued July 30, 1973.

[AA1921-127]

ELEMENTAL SULPHUR FROM CANADA

Rescheduling of hearing date

Notice is hereby given that the hearing in Investigation No. AA1921-127, scheduled to be held in the Tariff Commission's Hearing Room, Tariff Commission Building, 8th and E Streets, N.W., Washington, D.C., beginning at 10:00 a.m., E.D.T., on September 5, 1973, has been rescheduled for 10:00 a.m., E.D.T., on September 25, 1973. Requests to appear at the public hearing should be received by the Secretary of the Tariff Commission, in writing, at its offices in Washington, D.C., not later than noon, Thursday, September 20, 1973.

Written submissions. Interested parties may submit written statements of information and views, in lieu of their appearance at the public hearing, or they may supplement their oral testimony by written statements of any desired length. In order to be assured of consideration, all written statements should be submitted at the earliest practicable date, but not later than the close of business on October 9, 1973.

The hearing is being held in connection with a Commission investigation under the provisions of section 201(a) of the Anti-dumping Act, 1921, as amended, to determine whether an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of elemental sulphur from Canada which the Assistant Secretary of the Treasury has determined are being, or are likely to be, sold at less than fair value. Notice of the investigation was published in the *Federal Register* of July 31, 1973 (38 F.R. 20381).

By order of the Commission:

KENNETH R. MASON,
Secretary.

Issued August 2, 1973.

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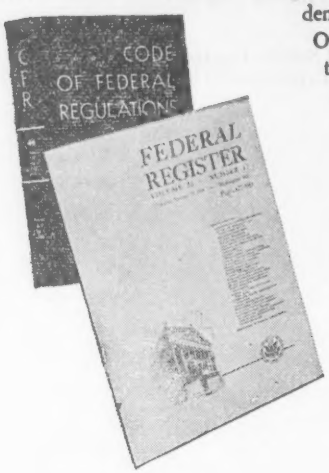

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